

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SIMON PHILLIPS, III,

Plaintiff,

v.

Case No. 10-11197

Honorable Patrick J. Duggan

OFFICER SETTLES,

Defendant.

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**OPINION AND ORDER (1) DENYING PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AND (2) GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff, a former inmate at the Washtenaw County Jail, filed this civil rights action pursuant to 42 U.S.C. § 1983 on March 25, 2010.¹ Plaintiff alleges that Defendant assaulted him. On September 1, 2010, Plaintiff filed a motion for partial summary judgment. On October 15, 2010, Defendant filed a motion for summary judgment. Plaintiff, notably, did not respond to Defendant's motion. This Court has referred this matter to Magistrate Judge R. Steven Whalen for all pretrial matters, including a report and recommendation ("R&R") on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. 21.)

On August 8, 2011, Magistrate Judge Whalen issued an R&R with respect to the motions. (Doc. 23.) Finding that Plaintiff has failed to exhaust his administrative

¹Plaintiff is now a Michigan Department of Corrections' prisoner, incarcerated at the St. Louis Correctional Facility.

remedies with respect to the allegations in his Complaint as required under the Prison Litigation Reform Act of 1996 (“PLRA”), 42 U.S.C. § 1997e(a), Magistrate Judge Whalen recommends that this Court dismiss his lawsuit without prejudice. Magistrate Judge Whalen therefore recommends that the Court not reach the additional arguments Defendant sets forth in support of his summary judgment motion and deny Plaintiff’s summary judgment motion.

At the conclusion of his R&R, Magistrate Judge Whalen informs the parties that they must file any objections to the R&R within fourteen days. (R&R at 5.) Plaintiff filed a “response” to the R&R on August 23, 2011. Defendant responded to Plaintiff’s pleading on September 5, 2011. Plaintiff filed a second “response” on September 14, 2011.

When objections are filed to a report and recommendation by a magistrate judge on a dispositive matter, the Court “make[s] a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). The Court, however, “is not required to articulate all of the reasons it rejects a party’s objections.” *Thomas v. Halter*, 131 F. Supp. 2d 942, 944 (E.D. Mich. 2001) (citations omitted). A party’s failure to file objections to certain conclusions of the Report and Recommendation waives any further right to appeal on those issues. *See Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to certain conclusions in the magistrate judge’s report releases the Court from its duty to independently review those issues. *See Thomas v. Arn*,

474 U.S. 140, 149, 106 S. Ct. 466, 472 (1985). Overly general objections do not satisfy the objection requirement. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). “The objection must be clear enough to enable the district court to discern those issues that are dispositive and contentious.” *Id.* “[O]bjections disput[ing] the correctness of the magistrate’s recommendation but fail[ing] to specify the findings . . . believed in error” are too general. *Id.*

In neither of his responses to the R&R does Plaintiff object to Magistrate Judge Whalen’s conclusion that Plaintiff failed to exhaust his administrative remedies prior to filing this lawsuit and that his lawsuit therefore must be dismissed under the PLRA. Because Plaintiff failed to respond to Defendant’s summary judgment motion, he has failed to refute Defendant’s evidence that he neglected to exhaust his administrative remedies. This Court therefore concurs in Magistrate Judge Whalen’s conclusion that Plaintiff’s complaint should be dismissed without prejudice pursuant to the PLRA.

Accordingly,

IT IS ORDERED, that Plaintiff’s motion for partial summary judgment is **DENIED**;

IT IS FURTHER ORDERED, that Defendant’s motion for summary judgment is **GRANTED**.

Date: September 15, 2011

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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